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|--|-------------|----------------------|---------------------|------------------|
| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/889,177   | 11/27/2001  | Carl Tyren           | 03940.0056          | 8105             |
| 7590   | 11/19/2003  |                      |                     |                  |
| Finnegan Henderson Farabow Garrett & Dunner<br>1300 I Street NW<br>Washington, DC 20005-3315 |             |                      | EXAMINER            |                  |
|  |             |                      | PAIK, STEVE S       |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2876                |                  |

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|------------------------------|------------------------|---------------------|--|
|                              | 09/889,177             | TYREN, CARL         |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Steven S. Paik         | 2876                |  |

-- The MAILING DATE of this communication appars on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office after the period set or extended period for reply will be subject to a surcharge of \$170.00 for each month or portion thereof.

### Status

1)  Responsive to communication(s) filed on 25 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-13 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 November 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All  Some  c) None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Receipt is acknowledged of the Amendment filed August 25, 2003.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Objections***

3. Claim 6 is objected to because of the following informalities: the recited limitation, "magnetic member" in line 2 appears lacking the proper antecedent basis. The examiner respectfully suggests amending it by -- metallic member -- to overcome the issue of lacking the proper antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lagarde (US 4,350,883).

Re claim 8, Lagarde discloses an apparatus and a method of marking and identifying an object comprising:

a plurality of electrically conductive members (metallic wires 2, 3, and 4), wherein each of the electrically conductive members has a unique predetermined diameter (col. 2, ll. 13-22).

Re claims 12 and 13, Lagarde discloses an apparatus and a method of marking and identifying an object. As the figure shows, the electrically conductive members are formed by an elongated element (Figs. 1 and 2) and may have sections of different diameters. Lagarde teaches that the metallic wires 2, 3 and 4 may be identical to one another or different, but are always selected from a predetermined range of specimens. Based on intended use, the predetermined range of specimens may have different electrical properties, magnetic properties, which do not exclude the possibility of having different physical properties such as the size of the electrically conductive members. Furthermore, the electrically conductive members inherently have galvanic contact with each other. The galvanic contact is a contact having an electrical effect caused by intense excitation of electrically conductive members.

Re claim 9, Lagarde discloses that the electrically conductive members (2-4) are formed as metallic wires, strips or ribbons (col. 2, ll. 25-29).

Re claim 10, Lagarde discloses that the metallic wires, strips or ribbons comprises a non-magnetic metal preferably copper or aluminum (col. 2, line 26).

Re claim 11, Lagarde discloses that the metallic wires, strips or ribbons comprises magnetic material, preferably iron, steel or an amorphous metal alloy (col. 2, ll. 27-29).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagarde (US 4,350,883) in view of Humphrey (US 4,660,025).

Re claim 1, Lagarde discloses a method of detecting an article identifying device (label 1) having at least one electrically conductive members (2, 3, and 4). Although the device identifies objects by passing through a high-frequency electromagnetic field and detecting the variation in the corresponding response signals, Lagarde is silent about detecting a discontinuity in variation in impedance of said member.

Humphrey discloses a marker for use in an article surveillance system in which an alternating magnetic field is established throughout a surveillance region and an alarm is activated when a predetermined perturbation to said field is detected, said marker consisting of a body of magnetic material having a magnetic hysteresis loop with a large Barkhausen discontinuity such that exposure of said body to an external magnetic field, whose field strength in the direction opposing the instantaneous magnetic polarization of said body exceeds a predetermined threshold value, results in regenerative reversal of said magnetic polarization, and means for securing said body to an article to be maintained under surveillance (col. 3, ll. 47-60). The above obviously suggests steps of detecting discontinuity in variation in impedance since there is proportional relationship between the impedance and permeability, resistivity of conductive member and frequency.

In view of Humphrey reference, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to further employ the steps of identifying, detecting, and comparing magnetic polarization with a predetermined threshold value of a marker having identifiable discontinuity in addition to the object identifier of Lagarde due to the fact that the

same object can be achieved using different techniques. Both techniques successfully identify objects in accordance with the change in electrical properties and/or magnetic properties of electrically conductive materials. Furthermore, such functionally equivalent modification would have been an obvious matter of design variation, well within the ordinary skill in the art, and therefore an obvious expedient.

Re claims 2-4, Lagarde in view of Humphrey discloses the method as recited in rejected claim 1 stated above further teaches the apparatus includes a plurality of electrically conductive members (2, 3 and 4 in Fig. 2). Each of the electrically conductive members has a unique predetermined diameter (col. 2, ll. 13-29). As the figure shows, the electrically conductive members are formed by an elongated element (Figs. 1 and 2) and may have sections of different diameters. Lagarde teaches that the metallic wires 2, 3 and 4 may be identical to one another or different, but are always selected from a predetermined range of specimens. Based on intended use, the predetermined range of specimens may have different electrical properties, magnetic properties, and electromagnetic properties, which do not exclude the possibility of having different physical properties such as the size of the electrically conductive members.

Re claim 5, Lagarde in view of Humphrey discloses that the electrically conductive members (2-4) are formed as elongated metallic wires (2, 3 and 4), strips or ribbons (col. 2, ll. 25-29).

Re claim 6, Lagarde in view of Humphrey discloses that the elongated metallic wires, strips or ribbons comprises a non-magnetic metal preferably copper or aluminum (col. 2, line 26).

Re claim 7, Lagarde in view of Humphrey discloses that the elongated metallic wires, strips or ribbons comprises a magnetic material, preferably iron, steel or an amorphous metal alloy (col. 2, ll. 27-29).

*Response to Arguments*

8. Applicant's arguments filed August 25, 2003 have been fully considered but they are not persuasive.

**Claims 8-13 under 35 U.S.C. § 102 (b):**

The applicant argues that the cited reference, Lagarde (US 4,350,833), does not disclose an element having a specific diameter being used for detection. The examiner respectfully disagrees. In column 2, Lagarde discloses an identification "label" 1 adapted to be attached to a larger object, or the object itself, e.g., a card of plastics material.

The label 1 comprises in its mass metallic wires 2, 3 and 4, introduced during its manufacture, which may be identical to one another or different, but are always selected from a predetermined range of specimens.

The above teaching clearly shows that the metallic wires may be the same or different and always selected from a predetermined range of specimens. This certainly would not exclude a label having metallic wires with different diameters. Furthermore, independent claim 8 does not claim the electrically conductive members having different diameter. The claim recites, "wherein each of the electrically conductive members has a unique predetermined diameter". The claimed limitation of "a unique predetermined diameter" does not necessarily claim the electrically conductive members with a different diameter. Therefore, the cited

reference reads on the claim 8 and its dependent claims within a reasonably broad interpretation.

**Claims 1-7 under 35 U.S.C. § 103 (a):**

The applicant deems that Humphrey (US 4,660,025) reference is not all relevant. The examiner respectfully disagrees. Humphrey's invention is related to a marker for an electronic article surveillance system. The system comprises a body of magnetic material with retained stress and having a magnetic hysteresis loop with a large Barkhausen discontinuity such that, upon exposure of the marker to an external magnetic field whose field strength in the direction opposing the instantaneous magnetic polarization of the marker exceeds a predetermined threshold value, there results a regenerative reversal of the magnetic polarization of the marker. An electronic article surveillance system and a method utilizing the marker are undoubtedly related to the article identification label of Lagarde. Therefore, Lagarde in view of Humphrey believes to be disclosing, teaching, and fairly suggesting the claimed invention.

In conclusion, pending claims 1-13 remain rejected under 35 U.S.C. § 102 (b) or 103(a).

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

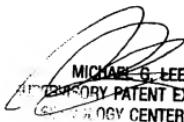
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven S. Paik whose telephone number is 703-308-6190. The examiner can normally be reached on Mon - Fri (7:00am-3:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0530.

*Steven Paik*  
Steven S. Paik  
Examiner  
Art Unit 2876

ssp  
November 11, 2003

  
MICHAEL G. LEE  
EXTRAORDINARY PATENT EXAMINER  
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